

Illinois law requires a Certificate of Resale to contain the information set out in 86 Ill. Adm. Code 130.1405(b) (This is a GIL.)

September 6, 2001

Dear Xxxxx:

This letter is in response to your letter dated July 31, 2001. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be found on the Department's website at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

This Firm represents a manufacturing concern ['Company'] located in the STATE. The Company is an S-corporation with shareholders all resident and domiciled in STATE. The basic business of the Company is as follows:

1. Purchase a 'core' exterior residential metal door slab. The slab is solid metal with an insulated interior. The supplier applies the undercoat paint.
2. Cut holes in the door (via jigs, dies and saws) in which to insert glass and locking hardware.
3. Paint or stain the door.
4. Insert colored glass into door.
5. Hang pre-finished door in company-assembled jamb.

The doors are primarily sold directly to retailers, who, in turn, install the doors in customer residences. Occasionally, the customer is a wholesaler who will sell the door to contractors.

The Company currently utilizes common carriers to deliver the product to its customers. Effective September 1, 2001 the Company intends to deliver the finished product to Company customers by vehicles owned by the Company and by drivers employed by the Company.

### **Request for Ruling**

In order that Company management complies with the sales tax provisions of your State, we request a ruling, which will address the following issues:

1. Whether a sale to a contractor (who ultimately installs the door on the customer's residence) is considered a retail sale by the Company, or a taxable purchase by the contractor who is required to remit use tax to the State.

- a. If the sale is considered a retail sale, please advise of your State's statutory and regulatory provisions, which require the Company to collect, and remit, sales tax on these type sales. Also, please provide the necessary forms and instructions used to collect and remit the tax.
  - b. If the sale is one to which the contractor is required to remit use tax to the state, please provide information, which can be passed on to the Company customer.
2. Whether the sales to wholesalers who, in turn, sell to contractors will be considered exempt sales-for-resale.
  - a. If so, please provide this Firm with the necessary forms and instructions to obtain the exemption certificates.
  - b. If not, please advise of your State's statutory and regulatory provisions which require the Company to collect, and remit, sales tax on sales-for-resale. Also, please provide the necessary forms and instructions used to collect and remit the tax.

### **Requirement to File Corporate Income Tax Returns**

Please forward the second copy of this ruling to your corporate income tax division. We request that a representative of that division advise whether it is their position that the Company is required to file a corporate income tax return with the State. It is important for those representative(s) to understand that the only association the Company will have with the State is delivery of finished goods to customers in the State via Company vehicles. Further, the Company will not own or lease any real or personal property located in the State.

If the representatives determine that the Company is subject to filing a corporate income tax return in the State, please advise of the following:

1. The statutory and regulatory authorities upon which such conclusion is based.
2. Whether the State respects the S-corporation election of the Company
3. Whether the State will accept a 'composite' return of an S-corporation with five (5) or fewer shareholders.

### **Prompt Response Requested**

As a representative of the State, the State is being allowed in excess of one (1) month to respond to our request for guidance. If a representative of the State fails to respond in a timely manner, it will be the position of this Firm that the failure to properly comply with the sales tax and income tax provisions of the State is the responsibility of the State.

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Please contact the undersigned if the sales tax or income tax representatives need any further information to provide a written ruling on these matters.

The timeliness of our response to your letter in no way relieves your client of its obligation to pay taxes to the State of Illinois. The Retailers' Occupation Tax Act imposes a tax upon persons engaged in the business of selling at retail tangible personal property. 35 ILCS 120/2 (2000 State Bar Edition). The Use Tax Act imposes a tax upon the privilege of using in this State tangible personal property purchased at retail from a retailer. 35 ILCS 105/3 (2000 State Bar Edition).

Sales to customers who will then resell the property are exempt from Illinois tax. Illinois law requires a Certificate of Resale to contain the information set out in 86 Ill. Adm. Code 130.1405(b), enclosed. A Certificate of Resale is a statement signed by the purchaser that the property purchased by him is purchased for purposes of resale. In addition to the statement, a Certificate of Resale must contain:

- 1) The seller's name and address;
- 2) the purchaser's name and address;
- 3) a description of the items being purchased for resale;
- 4) purchaser's signature, or the signature of an authorized employee or agent of the purchaser, and date of signing;
- 5) Registration Number, Resale Number, or Certification of Resale to Out-of-State Purchaser
  - A) purchaser's registration number with the Illinois Department of Revenue; or
  - B) purchaser's resale number issued by the Department of Revenue; or
  - C) a statement that the purchaser is an out-of-State purchaser who will sell only to purchasers located outside the State of Illinois.

When sales are made at retail, tax is owed. As stated above, the Retailers' Occupation Tax Act imposes a tax upon persons engaged in the business of selling tangible personal property at retail. A "sale at retail" is any transfer of the ownership of, or title to, tangible personal property to a purchaser, for use or consumption and not for resale in any form as tangible personal property, for a valuable consideration. See the enclosed copies of 86 Ill. Adm. Code 130.101 and 130.201.

Please find enclosed copies of 86 Ill. Adm. Code 130.1940 and 130.2075 regarding the tax liabilities of contractors in Illinois. The term "construction contractors" includes general contractors, subcontractors, and specialized contractors such as landscape contractors. The term "contractor" means any person or persons who are engaged in the occupation of entering into and performing construction contracts for owners. In Illinois, construction contractors are deemed end users of tangible personal property purchased for incorporation into real property. As end users of such tangible personal property, contractors incur Use Tax liability for such purchases based upon the cost price of the tangible personal property. Therefore, any tangible personal property that general contractors or subcontractors purchase that will be permanently affixed to or incorporated into real property in this State will be subject to Use Tax. If contractors did not pay the Use Tax liability to their suppliers, contractors must self-assess their Use Tax liability and pay it directly to the Department.

In Illinois, organizations that are determined by the Department to be exclusively charitable, religious, educational, or a governmental body, are issued tax exemption identification numbers ("E" numbers). Organizations holding such numbers are exempted from paying sales tax on organizational purchases. The organization must obtain and present this number to a retailer, however, before it can make a tax-free purchase. Suppliers selling tangible personal property to such exempt organizations must retain the "E" number in order to document the exempt sale.

As stated above, contractors are generally considered to be the end users of tangible personal property they permanently incorporate into real estate and owe Use Tax upon their purchases. However, contractors who physically incorporate tangible personal property into real estate owned by holders of "E" numbers can purchase such property tax-free by providing their suppliers with the certification described in Section 130.2075(d), as well as the "E" number of the group into whose real estate that property will be incorporated. The suppliers should retain this information in order to document the tax-exempt sale.

Sales of tangible personal property to a construction contractor who does not incorporate the items into real estate owned by an exempt organization are subject to tax. Items which are purchased tax-free because of their intended incorporation into real estate owned by an exempt organization, but which are not, in fact, incorporated into real estate owned by an exempt organization, are also subject to tax.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis  
Associate Counsel

MAJ:msk  
Enc.